

HUMAN RIGHTS IN HISTORY – Postclassical Period

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INTRODUCTION

Mixed signals The postclassical centuries marked no systematic advance for ideas of human rights. The spread of the missionary religions, one of the major developments in the period, had conflicting implications. Leaders like the Prophet Muhammed correctly noted that they had improved protections for women in a number of ways, compared to prior traditions – particularly in domains such as property and marriage rights. But they had not attempted equality of rights, and the growing adoptions of earlier Middle Eastern customs, aiming at greater seclusion of women in the upper classes, arguably introduced new constraints. Even more obviously, the missionary religions introduced new motives for identifying and attacking religious deviance.

Implications of growing trade Two other major features of the postclassical period warrant some consideration in the human rights area. Transregional trade expanded, with new routes connecting various parts of Africa, Asia and Europe. Arabs took the lead in new merchant activity, and facilitated efforts to develop commercial rules that could facilitate business activity across political borders. Europeans would copy ideas of commercial law from this model. This might lead to some ideas about commercial “rights”, including claims by clusters of merchants – for example, Arab merchant colonies in some southern Chinese coastal cities – to operate by their own rules (again, a model later copied by Europeans). But connections with fuller ideas of human rights were vague at best.

Results of interregional contact The postclassical period also saw new efforts by emerging areas of civilization to imitate features of more advanced neighbors, as in Japan’s efforts to study Chinese patterns, or Russia’s eager imitation of aspects of Byzantine political and culture. Human rights did not figure in this process. Japan briefly attempted to imitate China’s centralized political structure; Russian leaders admired the Byzantine state. Though in both cases actual political patterns remained more loosely organized, the new influences did not point in a human rights direction.

Arab Golden Age At its height, in the 9th-10th centuries, the Arab Caliphate offered a model of considerable tolerance. State service was not confined to Arab Sunni Muslims. Cultural life featured vigorous philosophical debates and an abundance of secular literature and scientific research. The same latitudes describe intellectual life in Cordovan Spain, under Muslim rule. Tis period – the Arab Golden Age – can legitimately be cited as an example of the creative, dynamic results of intellectual diversity. But this tolerance did not generate new ideas of intellectual rights, and indeed by the end of the classical period de facto tolerance was declining. Arab culture narrowed, with greater emphasis on religious orthodoxy; and in Spain Christian “reconquerors” did not replicate the tolerant spirit of their Muslim predecessors. As before, in other words, no structural safeguards were introduced.

The Mongols For their part, at the end of the postclassical period, Mongol rulers, particularly in Central Asia and China, proved widely tolerant once they had completed their (often bloody) conquests. They used a variety of ethnic and religious groups as sources of state administrators, they encouraged the exploration of diverse ideas while also promoting trade and travel. But they had no interest in systematic measures to define and protect religious or intellectual rights; the system depended on the inclinations of individual rulers.

Feudalism and religion in the West Western Europe, or at least parts of Western Europe, might be seen as a partial exception, but this should not be pressed too far. The combination of feudalism, and the notion of feudal “rights” against a monarch, and the separate status of the Catholic Church could introduce efforts

to limit the arbitrary power of political rulers, and in documents like the Magna Carta some hints of systematic rights did emerge. But these developments were tentative at best. It was in this same period, from the 12th century onward, that the Church – initially in France, then more widely – introduced the Inquisition as a means of identifying and punishing religious heresy, and while the Inquisition did develop rules of inquiry these did not include any sense of religious rights. Clearly, the postclassical period, even in Western Europe, featured mixed signals by modern human rights standards; there was no systematic progress.

Study questions:

1. Should the postclassical period be identified for distinctive human rights gains? What are the best arguments pro and con?
2. What were the implications of growing interregional contacts for human rights, during the postclassical period?
3. Was Western Europe beginning to develop a distinctive approach toward human rights?

Further reading:

James Given, *Inquisition and Medieval Society* (Cornell University Press, 2001).

Frederick Starr, *Lost Enlightenment: Central Asia's Golden Age from the Arab Conquest to Tamerlane* (Princeton University Press, 2015).

THE WORLD RELIGIONS

The world religions The centuries after the fall of the great classical empires saw a substantial increase in the role of religion, particularly the great missionary religions of Buddhism, Christianity and Islam – and Islam itself was a major new entrant. All three of these religions ultimately claimed a mission to convert as many people as possible, across political and cultural boundaries, because each claimed the possession of ultimate religious truth. The resultant question, of whether the religions contributed to a preparation of human rights thinking, or added new limitations, becomes increasingly important for the centuries after 600 CE, in many parts of Asia, Europe and Africa. And it is not easy to answer.

Universality and spiritual equality The three religions introduced two innovations relevant to later thinking about human rights. First, they conveyed some active awareness of a common humanity, in the sense that they aimed at wide conversions and were not confined, as previous religions had been, to focusing on a single people. Second, they posited a basic spiritual equality among all believers. All faithful, rich or poor, male or female, were in principle endowed with a soul or a portion of the divine essence. This did not necessarily generate a sense of rights: equality might be seen more in terms of equal obligations to the divine or equal opportunities for spiritual advancement after life on earth. But the modification of the easy acceptance of inequality characteristic of all the classical civilizations could be a relevant step forward, at least in principle.

New boundaries and intolerance Against this, however, the religions introduced two new complications to any human rights approach. First, while they envisaged humanity to some extent, they also heightened the importance of new religious boundaries. The sense of shared fellowship with co-religionists also created a sense of superiority over non-believers, and this could easily lead to a belief that non-believers had inferior rights. Shading off from this, emphasis on possession of ultimate religious truth easily led to new levels of legal intolerance for members of society who were attached to a different faith. Issues of religious tolerance were not brand new in the postclassical period, but many earlier religions – and particularly polytheistic religions – had been rather flexible. Now, however, boundary lines became sharper, heightening one of the key problems modern human rights thinking would seek to attack.

Inequalities Furthermore, all three religions introduced tensions between statements of spiritual equality and ongoing divisions into unequal categories. Most obviously, all three religions excluded women from most official positions in the religion and urged obedience of wives to husbands. They introduced certain gains for women, but in some ways heightened gender inequality.

Buddhism Of the three religions, Buddhism proved the most flexible, frequently (though not invariably) coexisting with other belief systems. Not a legalistic religion, and lacking a single doctrinal statement, Buddhism's general aversion to violence could lead to new concerns about protecting human life and avoiding cruelty; these tendencies were not framed in terms of rights, but they might prove compatible with human rights thinking later on.

Christianity and Islam on tolerance Christianity and Islam, in contrast, were more legalistic. Both established firm positions on the treatment of other religions, or of sectarian divisions within the faith. Christianity was simply intolerant. People accused of heresy were subject to violent punishment. Jewish communities were sometimes allowed, but with no protections in principle and frequent subject to outright attack. Islam was more nuanced, though there was no tolerance for polytheism, regarded (as with Christianity) as an offense against God. Christians and Jews were seen as "people of the book", and usually allowed to worship upon payment of a special tax, though with limits on the size of religious buildings and other constraints designed to prevent Muslims from being attracted to these inferior faiths. This was a situation of partial tolerance amid legal inequality.

Punishments Both Christianity and Islam proved quite comfortable with extreme punishments for a range of immoral or antireligious behaviors, with frequent applications of physical punishments and even death. This was in a sense the dark side of religious legalism, and would prove to be a challenge for human rights efforts in more modern times.

New protections The importance of behavioral rules in other respects could involve new kinds of protection. Both Christianity and Islam, emphasizing the importance of God's creation and the possession of souls, vigorously attacked the tradition of infanticide as a means of population control. While this did not lead to a proclamation of infant rights, the insistence had a comparable effect. Both religions, again in principle, insisted that marriage should involve the consent of both partners; here too, however, the belief was not firmly codified and, though particularly in Islam, was often ignored in fact. Both religions were uncomfortable with slaveholding, at least if the enslaved shared the true religious faith. In Islam this encouraged some de facto rules, for example banning the sale of family members of slaves who were Muslim.

Islam and rights Islam on the whole went further than Christianity in suggesting other stipulations that might be regarded as rights. Thus women were supposed to share in inheritance. They were allowed to divorce. To be sure, "rights" were not specifically referred to. And legal inequality remained clear: the property shares were less than those of men, divorce procedures were far more complicated. But Islamic legalism arguably represented some advance in principle, particularly when combined with their applicability to all believers.

Christianity and the state For its part, Christianity, if only because of its distinctive historical evolution, introduced a certain sense of division between the state and religious authority that could be relevant for human rights thinking in later periods. Islam, in contrast, emerged in close association with the state, and while it did not actually exercise a greater deal of control over rulers during the period of the Arab caliphates, it did not set boundaries. Christianity developed as a minority religion within the Roman Empire, establishing separate church institutions that were regarded as distinct from, and spiritually superior to, the institutions of the state. This division was, to be sure, significantly modified once the Roman state adopted Christianity. The Eastern Orthodox version of Christianity, predominant in the Byzantine Empire and later in Russia, did not maintain significant church-state tension. In Western Europe, however, despite frequent church-state collaboration as in the punishment of heretics, a certain division did persist. This in turn gave Christians a vantage point from which certain state actions could be judged immoral and in which the notion of limiting the state for the greater good might take shape.

Natural law Finally, both Muslim and Christian thinkers grappled with the heritage of classical Roman thinking about natural law. For Christian theologians like Thomas Aquinas (1225-74), natural law, though a product of human reason, was seen as compatible with divine law, and it provided a standard by which actual government actions might be judged unjust. "A tyrannical law, though not being according to reason, is not a law, strictly speaking." While Aquinas normally urged political obedience, he explicitly argued that unjust laws need not be followed "if without scandal or greater damage" a person can resist.

Ambivalent heritage During the postclassical centuries, none of the expanding religions created clear impetus for advances in human rights, and in some ways they introduced new barriers while confirming a variety of legal inequalities. But they did introduce new thinking that could, in a somewhat altered environment, prove relevant to human rights ideas.

Study questions:

1. In what ways did the three major missionary religions create new human rights problems?
2. Was the idea of spiritual equality an important step toward more explicit human rights thinking?
3. Were Christians more likely than Muslim to reject the use of state power to promote religious gains?

Further reading:

Brian Tierney, *The Idea of Natural Rights: studies on natural rights, natural law and Church law, 1150-1625* (Emory University Press, 2001).

Liam Gearon, ed., *Human Rights and Religion* (Sussex Academic Press, 2002).

Carmen Meinert and Hans-Bernd Zollners, eds., *Buddhist Approaches to Human Rights: dissonances and resonances* (Transcript, 2010).

John Witte Jr. and Frank Alexander, eds., *Christianity and Human Rights: an introduction* (Cambridge University Press, 2010).

THE MAGNA CARTA AND HUMAN RIGHTS

The issue In 1215 a quarrel between a group of English nobles and the king led to the signing of a document, the Magna Carta or Great Charter, that established at least in principle some new constraints on the actions of the monarch. King John, pursuing expensive wars in France, had attempted to levy new taxes on the nobles, and they resisted. But the document they forced the king to sign went beyond simply addressing this grievance. According to some, the result was a major step in the history of human rights in the West. Against this, the document can be interpreted mainly as an assertion of noble privilege, that only later on – after some serious human rights thinking did begin to emerge, in the 17th century – would be reevaluated as a human rights measure.

Feudalism After the fall of the Roman empire, the idea of monarchy was only gradually recovered in Western Europe. Weak central states created a situation in which landed nobles provided much of whatever order was possible in many regions. These nobles could afford some armed retainers, many of whom were given grants of land as a reward. Small networks developed, with greater lords providing some support and protection, lesser lords pledging loyalty and military service in return – the system that is known as feudalism. Lesser lords, or vassals, were frequently consulted by the lord, and from this they might contend that the lord was obligated to listen to their opinions before taking risky action. Feudal lords also provided law courts for the adjudication of disputes within the group, leading to a belief that vassals accused of some offense had a right to trial by noble peers. None of this spilled over into thinking about the bulk of the population, many of whom were held as serf, but for the nobility itself it could generate some claims about customary rights.

Feudal monarchies In France and England, though in slightly different ways, this feudal system was gradually and partially blended with somewhat stronger central monarchies. Essentially, kings acted like particularly powerful lords, recruiting a growing number of vassals many of whom were substantial lords in their own right. Alongside this system, the Catholic Church had its own claims to spiritual, and sometimes temporal power, in principle somewhat independent from the feudal kings and lords.

Magna Carta Most of the Magna Carta was devoted to clarifying the rights of the noble vassals vis-à-vis the monarch, while also assuring the independence of the Church. Thus the monarch had the right to assign children of the nobility in marriage (the Christian idea of consent was ignored), but only to people of the same social status. Women's opportunities to testify in court were limited. Property rights of Jewish moneylenders were restricted. The document stipulated that if the monarch want to levy new taxes, he must call a great council representing the nobility and higher church officials – here was an idea that, fifty years later, would lead to the calling of England's first parliament and the more general notion that the upper

classes should not be taxed without their consent. Overall, the main point was a confirmation of the fact that feudal monarchy represented limited government, not arbitrary rule, and that nobles and the Church had special privileges within this system.

New rights? The fact that feudal kings were constrained was not new, but arguably the emergence of a more formal statement to this effect, and then an institution (parliament) representing the upper classes to provide some check on royal action, were important moves potentially relevant to human rights. It is worth noting that Japan, which also developed a feudal system in this period, did not produce a comparable sense of limitations on the actions of higher lords; greater emphasis was placed on unconditional loyalty. More directly, furthermore, the Magna Carta vaguely stated that “free men” should not be punished disproportionately. Phrases referred to “liberties, rights and concessions” granted to “men in our kingdom” “in their fullness and entirety for them and their heirs...in all things and all places for ever.” Judges were instructed to know the law and “keep it well”. Mostly, the Magna Carta confirmed special privileges for the upper classes – “rights” that they alone possessed, including trial by their peers. But it did advance the idea of limits on executive power and it did suggest some vague sense that a larger number of Englishmen should be protected from arbitrary acts.

Study questions:

1. Was the development of feudalism an important step in the emergence of human rights in Western Europe?
2. What rights were protected by the Magna Carta?
3. Does the combination of feudalism and the position of the Catholic Church in the West help explain the emergence of human rights ideas? Or were further changes essential to produce any real human rights approach?

Further reading:

James Holt, *Magna Carta* (3rd ed., Cambridge University Press, 2015).

Katherine Drew, *Magna Carta* (Greenwood, 2004).